witnesses. His brother (D.W.2) and his sister-in-law (D.W.3) merely repeated the story that a meeting took place between the Accused and Lee Chee Siong. But they did not know what the conversation was about. Strangely enough, D.W.3, who was doing washing at that time and whose back was facing the Accused, knew what was going on behind her. I did not believe the evidence of D.W.2 and D.W.3.

Counsel for the Accused submitted that the Accused went from one place to another to look for the "jambu" (guava) tree. According to him, this clearly shows that the Accused had no knowledge. With respect, I did not believe the story about the "jambu" (guava) tree. The Accused's small holding was more than three acres in size. It was a large piece of land to search for the hidden grenades. Unless the Accused knew personally where the grenades were exactly hidden, he would not be able to find them.

On the grounds stated above, I could not accept the defence story. The defence, therefore, failed to raise any reasonable doubt in the Prosecution case and I accordingly found the Accused guilty as charged. He was convicted and sentenced to death.

The accused appealed to the Federal Court.

FEDERAL COURT.

Karpal Singh for the appellant.

Lim Beng Choon (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah F.J. (delivering the judgment of the Court): Mr. Karpal Singh has put forward 2 grounds of appeal which we think were powerful arguments and attractively presented. We shall deal with each of the grounds very briefly.

There is a continuing debate as to the wisdom and effectiveness of capital punishment in particular under section 57(1) of the Internal Security Act 1960 but we think the authority to enact it , as a constitutional matter, has never been in doubt. Parliament has the plenary powers to enact it. The case of *Mithu* v. *State of Punjab*[4] which was cited by Mr. Karpal Singh must be kept in its context. What may be an appropriate course of reasoning in a case involving capital punishment in India is not to be literally or even analogically applied to a case under section 57(1) of the Internal Security Act 1960. The position in *Mithu* relates to a set of circumstances hinging on specific provisions of the Indian Criminal Procedure Code, and we find no reason to depart from the decision of this court in *Public Prosecutor* v. *Lau Kee Hoo*[1] and the principles enunciated therein which we reaffirm. We would only observe that the Indian legislative provisions under consideration in *Mithu* have no paradigm here, and it is also significant that in condemning the mandatory death sentence in *Mithu*, the Supreme Court of India did not refer to or discuss its decision in *Maru Ram* v. *Union of India*[5] which upheld a mandatory non-capital sentence and the rationale thereof.

With regard to the ground on section 27 of the Evidence Act, we would briefly say that in the particular circumstances of this case on the evidence given of what was said and what took place, we are satisfied that the appellant's knowledge that the detonators and home-made grenades were buried in his oil palm holding amounts to control of them.

We therefore dismiss the appeal.

Appeal dismissed.

Solicitors: *Karpal Singh & Co.*

CHE ANI BIN ITAM v. PUBLIC PROSECUTOR

[F.C. (Raja Azlan Shah L.P.; Hashim Yeop A. Sani & Abdoolcader F.JJ.) December 12 & 20, 1983]

[Kuala Lumpur – Federal Court Criminal Reference No. 62 of 1981]

Criminal Law and Procedure – Whether sentence of life imprisonment defined to mean the duration of natural life of the person is unconstitutional – Firearms (Increased Penalties) Act, 1971, s. 4 – Firearms (Increased Penalties) (Amendment) Act, 1974. s.2 – Federal Constitution, arts. 5(1) & 8(1).

In this case the appellant was convicted in the Sessions Court of an offence under section 4 of the Firearms (Increased Penalties) Act, 1971 and sentenced to imprisonment for life with six strokes of whipping. He appealed to the High Court and on the application of the appellant the learned Judge stayed the proceedings and certified the following constitutional question for the determination of the Federal Court:

"Whether or not the sentence of life imprisonment for the duration of natural life as provided under section 4

of the 1971 Act read with the section 2 definition of life imprisonment as amended by Act A256/1974 is unconstitutional and violates Article 5(1) and Article 8(1) of the Federal Constitution."

Held: the question referred to the court should be answered in the negative. The sentence prescribed in the Firearms (Increased Penalties) Act, 1971 is constitutional and valid.

Cases referred to:

(1) *Maneka Gandhi* v. *Union of India* A.I.R. 1978 S.C. 597.
(2) *Karam Singh* v. *Menteri Hal Ehwal Dalam Negeri, Malaysia* [1969] 2 M.L.J. 129, 148.
(3) *Ong Ah Chuan* v. *Public Prosecutor* [1981] 1 M.L.J. 64, 71; [1981] A.C. 648, 670.
(4) *Hinds & Ors.* v. *The Queen* [1977] A.C. 195, 221.
(5) *Maru Ram* v. *Union of India* A.I.R. 1980 S.C. 2147.
(6) *Carmona* v. *Ward* (1979) 99 S.Ct. 874; 59 L Ed. 2d p. 58.
(7) *Rummel* v. *Estelle* (1980) 100 S.Ct. 1133; 63 LEd 2d p. 382.
(8) *Public Prosecutor* v. *Lau Kee Hoo* [1983] 1 M.L.J. 157.

FEDERAL COURT.

Karpal Singh for the appellant.

Mokhtar Abdullah (Deputy Public Prosecutor) (*Miss Chuah Ming Hung* Deputy Public Prosecutor with him) for the respondents.

Cur. Adv. Vult.

Raja Azlan Shah L.P. (delivering the judgment of the Court): The appellant was convicted in the Sessions Court at Kangar for an offence under section 4 of the Firearms (Increased Penalties) Act, 1971 ('the 1971 Act') and sentenced to imprisonment for life with six strokes of whipping. He appealed to the High Court, and right at the inception on an application by the appellant the learned Judge stayed the proceedings under the provisions of section 48(1) of the Courts of Judicature Act, 1964 and certified the following constitutional question for our determination:

"Whether or not the sentence of life imprisonment for the duration of natural life as provided under section 4 of the 1971 Act read with the section 2 definition of life imprisonment as amended by Act A256/1974 is unconstitutional and violates Article 5(1) and Article 8(1) of the Federal Constitution."

For ease of reference, Article 5(1) of the Federal Constitution provides that no person shall be deprived of his life or personal liberty save in accordance with law, and Article 8(1) prescribes that all persons are equal before the law and entitled to the equal protection of the law.

Mr. Karpal Singh for the appellant in his argument that the sentence of imprisonment for life as defined in section 2(1) of the 1971 Act to mean imprisonment for the duration of the natural life of the person sentenced is a savage sentence relies heavily on the decision of the Supreme Court of India in *Maneka Gandhi* v. *Union of India*[1] which held that a statute which merely prescribes some kind of procedure for depriving a person of his life or personal liberty cannot ever meet the requirements of Article 21 of the Indian Constitution, and that the procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary, with Bhagwati, J., observing that the concept of reasonableness must be projected in the procedure contemplated by Article 21, having regard to the impact of Article 14 [the equivalent of our Article 8(1)] on that article.

We do not think the argument advanced by Mr. Karpal Singh can be sustained. We would at the outset observe that a distinction was drawn in *Karam Singh* v. *Menteri Hal Ehwal Dalam Negeri, Malaysia*[2] (at page 148) between Article 21 of the Indian Constitution and Article 5(1) of our Constitution in that the former provides that 'no person shall be deprived of his life or personal liberty except according to procedure established by law' in contrast to the latter which makes no mention of the word 'procedure'. In any event notwithstanding the provisions of section 3 of the Criminal Justice Ordinance, 1953 which provide that a sentence of imprisonment for life shall be deemed for all purposes to be a sentence of imprisonment for twenty years and the amendments made to the Penal Code to substitute provisions for imprisonment for life with imprisonment for a term which may extend to twenty years, there are specific statutory exceptions however categorically providing for imprisonment for life to mean imprisonment for the duration of natural life in certain specified offences, such as, for example, section 130A of the Penal Code in relation to offences against the State under Chapter VI of the Penal Code, and the Arms Act, 1960.

It is now firmly established that 'law' in the context of such constitutional provisions as Articles 5, 8 and 13 of the Constitution refers to a system of law which incorporates those fundamental rules of natural justice that had formed

part and parcel of the common law of England that was in operation at the commencement of the Constitution [*Ong Ah Chuan* v. *Public Prosecutor*[3] (at page 670)]. We can see nothing in the statutory provision sought to be impugned before us to infringe the proposition enunciated. There is nothing arbitrary, fanciful or oppressive in the legislatively defined sentence for the specific offence in question committed under the 1971 Act. Lord Diplock said in *Hinds & Ors.* v. *The Queen*[4] (at page 221): "In the exercise of its legislative power, Parliament may, if it thinks fit, prescribe a fixed punishment to be inflicted upon the offenders found guilty of the defined offence ...".

The Supreme Court of India in *Maru Ram* v. *Union of India*[5] upheld the validity of an Act which required offenders awarded a life sentence for an offence for which death was a permissible penalty, and offenders whose death sentence was commuted to a term of life imprisonment, to undergo a minimum detention of fourteen years. In *Carmona* v. *Ward*[6] the Supreme Court of the United States of America denied a writ of certiorari to challenge the constitutionality of a mandatory life sentence imposed under a New York Law for the possession of an ounce of a substance containing cocaine. In *Rummel* v. *Estelle*[7] the Supreme Court of America by a majority decision upheld a statute which authorised a mandatory sentence of life imprisonment on a third conviction of a felony less than a capital felony. The principle underlying these decisions apply equally in the case before us in relation to the mandatory nature of the maximum term of the sentence imposable by a specific statutory definition for a specific offence. The legislature in doing so no doubt had in mind the object and purpose to be achieved by such a provision and it cannot accordingly be arbitrary in any sense of the word.

On the contention that the specified term for the duration of the natural life of the person sentenced violates the equality provisions in Article 8(1) of the Constitution, we would refer to the speech of Lord Diplock in *Ong Ah Chuan (ante)* (at page 674) where he says that the Singapore constitutional provision with regard to equality [which textually accords *totidem verbis* with our Article 8(1)] is not concerned with equal punitive treatment for equal moral blameworthiness but is concerned with equal punitive treatment for similar legal guilt. In matters relating to equal protection the basis of approach is the identification of legislative purpose and a reasonable classification is one that includes all persons who are similarly placed with respect to the purpose of the law. We would refer in elaboration and support to the decision of this court in *Public Prosecutor* v. *Lau Kee Hoo*[8] and also to *Maru Ram* referred to earlier.

We accordingly, at the conclusion of argument before us, answered the question posed for our consideration in the negative. The sentence prescribed in the 1971 Act is constitutional and valid, and we might perhaps just add that the existence of executive powers of clemency could well militate against the rigours of the sentence sought to be impugned by consideration on a case to case basis.

Order accordingly.

Solicitors: *Karpal Singh & Co.*

SYARIKAT KEWANGAN MELAYU RAYA BHD. v. MALAYAN BANKING BHD.

[F.C. (Salleh Abas C.J. (Malaya), Mohamed Azmi & Syed Agil Barakbah F.JJ.), June 22 & December 22, 1983]

[Kuala Lumpur – Federal Court Civil Appeal No. 302 of 1982]

Land Law – Charged land – Application for sale – Land subject to two charges – Notice of default – Whether defective – Notice citing both charges and lumping together sum due under both charges – Interpretation and General Clauses Ordinance, 1948, s. 2(1) – National Land Code, ss. 241, 254, 268 and Form 16D.

In this case the appellant appealed against the decision of Peh Swee Jin J. in which he dismissed the application to set aside the order of the Collector of Land Revenue that the land be sold for failure to comply with two notices of default in Form 16D to pay the sum of $2,840,826.94 due to the respondent under two charges. The grounds of the appellant's application were briefly –

(i) the heading of the two notices in Form 16D referred to "Notice of Default with respect to a charge" and not with respect to "charges", and whereas two charges and not merely one were shown in the Schedule to both the statutory notices. Consequently, by virtue of Section 436 and the Tenth Schedule to the National Land Code, there was non-compliance with Form 16D and both notices were therefore invalid and bad in law;

(ii) the respondent ought to have issued a separate statutory notice for each of the two charges, and each notice should contain the outstanding sum under each charge. To lump together all the amount due under both